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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS  
WILLIAM A. MUNDELL - Chairman  
JIM IRVIN  
MARC SPITZER  
JEFF HATCH-MILLER  
MIKE GLEASON

Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF ARIZONA-AMERICAN  
WATER COMPANY – AGUA FRIA DIVISION  
SEWER HOOK-UP FEE TARIFF REVISIONS

DOCKET NO. SW-01303A-02-0628

MOTION TO DISMISS

**I. Introduction.**

On August 16, 2002, Arizona-American Water Company's – Agua Fria Division ("Arizona-American" or "Company") filed tariff revisions with the Commission. On August 30, 2002, Arizona-American filed a letter in which it agreed to waive the normal 30-day time period allowed to process its filing so the filing could be held for the Commission's September 17 and 18, 2002, Open Meeting. With these tariff revisions, the Company is requesting approval to expand the applicability of its Water Facilities Hook-Up Fee Tariff (the existing tariff only applies to new service connections made within that portion of the Company's CC&N known as Whitestone). The purpose of the hook-up fee is to apportion the costs of constructing additional facilities to provide water production, treatment, transmission, storage, pressure and flow among all new service connections.

On September 20, 2002, the Commission issued Decision No. 65201, which suspended the tariff filing for a period of 120 days, through and including January 12, 2001.

Staff has completed its review of this tariff filing. The review consists of two parts. First, Staff analyzed the filing from an engineering perspective. Staff's Engineering Report is attached hereto as Exhibit A. Then, Staff reviewed the legal and policy implications of this tariff filing. Staff's response to these issues is set forth in this Motion to Dismiss.<sup>1</sup>

<sup>1</sup> Staff is filing an identical Motion to Dismiss in Docket No. W-01303A-02-0629, which is a parallel application concerning the Company's water hook-up fee.

1     **II. This application should be dismissed, and the requested hook-up fee should be**  
2     **considered as part of the Company's pending rate case.**

3     Staff is concerned that these tariff filings raise "fair value" problems. In order to analyze this  
4     issue, it is first necessary to determine whether these tariff filings constitute a "rate" within the  
5     meaning of Article XV § 3 of the Arizona Constitution. The Company has asserted that the amounts  
6     collected pursuant to these tariff filings will constitute contributions in aid of construction ("CIAC"),  
7     that CIAC is contributed capital and not revenue, that CIAC will not affect the Company's income or  
8     return on rate base. Staff agrees that the amounts collected pursuant to these tariff filings should be  
9     treated as CIAC. Moreover, Staff agrees that, from the perspective of ratemaking theory, the  
10    Company's other assertions are also correct. However, Staff believes that the term "rate" as used in  
11    Article XV § 3 of the Arizona Constitution must be given a broad and practical (rather than technical)  
12    construction given the constitutional and historical role of the Commission to protect the citizens of  
13    this State. Quite simply, a hook-up fee is money paid by a customer to the utility pursuant to a tariff  
14    authorized by the Commission. For all practical purposes, it is therefore a "rate". This conclusion is  
15    supported by the dictionary definition of "rate". Black's defines "rate" as "An amount paid or charged  
16    for a good or service".<sup>2</sup> Unquestionably, a hook-up is a service, and the hook-up fee is an amount  
17    paid for it.

18     It is now abundantly clear that to set rates, the Commission must make a fair value finding.<sup>3</sup>  
19     If, as described above, a hook-up fee is a rate, then the Commission must find fair value to approve  
20     the fee. In setting rates for competitive telecommunications companies (CLECs), the Commission  
21     has on some occasions found fair value based on limited evidence. But Arizona-American is a  
22     monopoly provider of water, not a CLEC. In determining fair value for the provider of monopoly  
23     services, the Commission should rely on traditional practices, which involve a detailed review of fair  
24     value.<sup>4</sup> Neither Staff nor the Company proposes to undertake such an extensive process for the  
25     purpose of the approval of this isolated tariff. Nor would it be practical to do so. Moreover, Staff

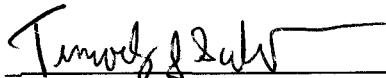
26     <sup>2</sup> *Black's Law Dictionary* (7<sup>th</sup> ed 1999) at 1268.

27     <sup>3</sup> *See US West Communications, Inc. v. Arizona Corp. Comm'n*, 201 Ariz. 242, 245 ¶ 11, 34 P.3d 351  
28     (2001).

29     <sup>4</sup> *See Id.*, 201 Ariz. at 246 ¶ 19 ("We still believe that when a monopoly exists, the rate-of-return  
30     method is proper.").

1 notes that the Company has filed a rate application for its Agua Fria District.<sup>5</sup> This ongoing rate  
2 proceeding is the appropriate place to consider the Company's proposed modifications to its hook-up  
3 fee tariff. Accordingly, Staff moves that this application be dismissed, the docket be closed, and that  
4 the Company be directed to pursue its proposed modifications to its hook-up fee tariff in its pending  
5 rate case.

6  
7 **RESPECTFULLY SUBMITTED** this 7<sup>th</sup> day of January 2003.

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9   
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13 The original and thirteen (13) copies of the foregoing  
14 were filed this 7<sup>th</sup> day of January 2003 with:

15 Docket Control  
16 Arizona Corporation Commission  
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17 Copies of the foregoing were mailed this  
18 7<sup>th</sup> day of January 2003 to:

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28

<sup>5</sup> Docket No. WS-01303A-02-0870.